IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 4679 of 2005

Between:

Poondla Kameshwaramma W/o. P. Chenchu Reddy
R/o. 16-111/1829, Ram Murthy Nagar, Nellore.

..... PETITIONER

AND

-

1 District Collector, Nellore.
2 Mandal Revenue Officer, Nellore.
3 Station House Officer, Nellore Rural Police station,

Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, Order or Orders, Direction or directions declaring the action of the 2nd Respondent in resuming the land of 6.21 Acres situated in Sy.No.235/1, Gundlapalem Village, Nellore Rural Mandalam, under the Provisions of Act 7 of 1977 without notice to the petitioner as illegal, arbitrary and unconstitutional and also to declare the FIR No. 53/2005 dt.6-3-2005 registered by the 3rd Respondent on the basis of the complaint of the 2nd Respondent as illegal and to issue a consequential direction to the Respondents to act in accordance with law.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents: GP FOR ASSIGNMENT

The Court at the admission stage made the following :

ORDER:

After purchasing Acs.6.21 cents in S.No.235/1, Gundlapalem Village, Nellore District under a registered sale deed dated 15.6.2001 from Shaik Ayesha Bano and others petitioner applied for and obtained a rythwari passbook in respect of the said land. On the basis of a complaint given by the Mandal Revenue

Officer, on instructions from the Collector, that petitioner encroached into Government land in S.No.235/2P adjacent to S.No.235/1, Station House Officer, Nellore Rural Police Station registered a Crime No.53 of 2005 under Section 7 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') against the petitioner. This petition is filed to quash the said FIR.

The case of respondents 1 and 2 is that since petitioner, taking advantage of the fact that the land in S.No.235/1, purchased by her, is adjacent to S.No.235/2P, which is an assigned land proceedings for resumption of the land in S.No.259/2P, from petitioner, as per the provisions of the Act, were initiated and order of resumption was passed and since petitioner in spite of the order of resumption did not vacate the land in S.No.235/2P first respondent instructed the second respondent to file a complaint under Section 7 of the Act.

The contention of the learned counsel for the petitioner is that since no notice of the proceedings said to have been initiated against the petitioner under the provisions of the Act is served on her, the said order is not binding on her and that she, in fact, is not even aware of initiation of proceedings under the Act till respondents 1 and 2 filed their counter.

The contention of the learned Government Pleader is that since the petitioner, taking advantage of the fact that she purchased land in S.No.235/1, which is adjacent to the assigned land in S.No.235/2P encroached into the said land proceedings for resumption were initiated and notice was served on her by affixture and an order resuming the land was passed and since petitioner did not vacate the land in spite of that order second respondent had to give a report against the petitioner.

That the land in S.No.235/1 is a private patta land is not in dispute. The dispute is with regard to possession of the petitioner over the land in S.No.235/2P which is said to be an assigned land. From the record it is seen that notice in the proceedings initiated against the petitioner under the provisions of the Act was not personally served on her, but was served by affixture to a pole planted in the land. Since the contention of the petitioner is that she is not in possession of the land in S.No.235/2P, question whether she encroached in S.No.239/2P and is in possession thereof, has to be decided before taking

criminal action against her under the provisions of the Act. Since the notice of the proceedings is not personally served on the petitioner she is entitled to an opportunity of being heard and so order of resumption said to have been passed by the second respondent against petitioner, in respect of the land in S.No.235/2P, is set aside and the matter is remitted to the second respondent for fresh disposal after giving an opportunity to the petitioner to file a counter. In Rc.B/1458/2004 on or before 18.08.2005. Second respondent shall dispose of the case in accordance with law, as expeditiously as possible, at any rate within six months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs.

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C.Y. Somayajulu, J.

13th July, 2005

js.

To

1 District Collector, Nellore.
2 Mandal Revenue Officer, Nellore.
3 Station House Officer, Nellore Rural Police station,

Nellore.

4 Two CCs to G.P. for Revenue, High Court Buildings,

Hyderabad.

5 2 CD copies.